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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/752,899

12/29/2000

Frank J. Bunick

MCP-0262

9623

7590 01/22/2010
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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT

PAPER NUMBER

1611

MAIL DATE

DELIVERY MODE

01/22/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/752,899	Applicant(s) BUNICK ET AL.	
	Examiner Lakshmi S. Channavajjala	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,8,9 and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,8,9 and 11-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of response dated 9-23-09 is acknowledged.

Claims 1-3, 5, 8-9, 11-14 are pending in the instant application.

The following rejection of record has been maintained:

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 5, 8-9 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,667,050 B1 to Boissonneault et al ('050) in view of US 3,619,292 to Brouillard ('292) OR US 6,667,050 B1 to Boissonneault et al ('050) and US 4,684,534 to Valentine ('534) in view of US 3,619,292 to Brouillard ('292).

'050 teach a chewable tablet composition comprising an active ingredient and carriers such as dextrose, microcrystalline cellulose, polyvinylpyrrolidone etc (all of which are claimed in the instant) and sucralose (examples). The examples of '050 contain sucralose as a sweetener. '050 teach the same binders and disintegrants that are also claimed in the instant invention but fail to teach dextrose monohydrate. The compositions of '050 do not necessarily require fat, non-saccharide water soluble binder or aspartame (claims 1, 8 and 11) (examples 3 and 6) and thus meet the claimed limitation. The examples of '050 teach the claimed disintegrants and lubricants (see examples) and other auxiliary ingredients of claim 12 (examples and col. 5-6).

'050 teach dextrose but not dextrose monohydrate and the claimed particle sizes.

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'292 teach forming a free-flowing tablet containing a binder or a binder-filler, which is a sugar granule. The sugar granule comprises aggregates of cohered microcrystals of dextrose (abstract and col. 1, L 1- 20). According to '292 dextrose hydrate provides more advantages when employed in direct compression than in wet granulation or dry granulation because it produces a cooling effect when dissolved in the mouth, which is highly desirable for a tableted food or a pharmaceutical and can also enhance the flavor in the tablet (col. 2, L 10-35), particularly chewable drug tablets (col. 5, KL 55-58).

Valentine '534 teaches a chewable tablet composition comprising excipient base materials such as carbohydrate based agglomerate materials including dextrose, dextrose monohydrate, fructose, sucrose etc., which are held together by small quantities of binding materials such as maltodextrin (col. 2-3). The carbohydrate agglomerates are in the size range of 20 to 100 microns (col. 4, L 29-35 & col. 9, lines 20-42) and particulate active agent having a particle size of about 50 microns (col. 4). '534 teaches at least 25% by weight of the carbohydrate agglomerate and in particular, claim 3 recites 90% to 99% by weight for a quick melting tablet. Valentine clearly states that the tablet is prepared by direct compression (col. 1, L 57-63).

It would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made that the particulate agglomerated carbohydrates or granules such as dextrose or dextrose monohydrate (of Valentine '534 or '292) in the composition of '050 for preparing directly compressed tablets because Valentine '534 teach that dextrose and dextrose monohydrate are equally effective for compressibility,

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the tablets are highly compressible and also the tablets readily dissolve in minimal amounts of water in the mouth thus quickly liquefying of the active agent. Further '292 also teach that dextrose monohydrate particles disintegrate very quickly in the mouth and enhance the flavor of the tablet.

New claim 14 recites the same limitation i.e., the ratio of dextrose monohydrate to sucralose, which was presented previously in claim 1. Claim 1 has now been amended to delete the limitation. With respect to the ratio of dextrose monohydrate and sucralose, the example compositions of '050 contain high amounts of dextrose compared to the sweeteners such as sucralose and aspartame. In this regard, applicants have not established any unexpected advantage with the claimed ratio and accordingly choosing the appropriate amounts of binders and sweeteners to achieve the desired effect would have been within the scope of a skilled artisan.

Response to Arguments

Applicant's arguments and the declaration filed 4-17-09 have been fully considered but they are not persuasive. Applicants' argue that one of the noteworthy features of Claim 1 is the inclusion of directly compressible dextrose monohydrate, which is important to the formation of the claimed tablet. It imparts a smooth, creamy texture and fast melt-away to soft tablets that are designed for chewing or dissolving in the mouth prior to swallowing and the tablet of the invention can be desirably formulated without including fats and water soluble binders. Applicants argue that they found the use of dextrose monohydrate, such as C*PHARMDEX 02011 (Glucose Monohydrate) from Cargill or LYCADEX® PF pyrogen-free dextrose monohydrate from Roquette

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Pharma, produced unacceptable results during tablet formation. In contrast, Applicants argue that they surprisingly discovered that when dextrose monohydrate that is directly compressible is used, such as the CERELOSE brand of dextrose monohydrate available from Corn Products USA, the resulting tablets were desirably chewable and/or dissolved in the mouth prior to swallowing.

Applicants argue that Boissonneault et al., Brouillard et al. and Valentine all fail to teach the inclusion of a directly compressible dextrose monohydrate and as such, Claim 1 is patentable over Boissonneault et al., Brouillard et al. and/or Valentine whether considered separately or in combination. It is argued that claim 12 is similar to Claim 1 and also includes a directly compressible dextrose monohydrate. It is argued that claims 2, 3, 5, 8, 9, 11 and 14 depend from Claim 1, and Claim 13 depends from Claim 12 and hence these claims are also believed to be patentable over the cited references, since they depend from a patentable base claim.

Applicants' arguments are not persuasive because the very invention of Brouillard is an improvement over the known disadvantages of preparing compression tablets (dry or wet). Brouillard teaches that the dextrose granules are compressible (abstract) and that the advantages of granules are maximized in compression (col. 2, L 20-25). If a prima facie case of obviousness is established, the burden shifts to the applicant to come forward with arguments and/or evidence to rebut the prima facie case. See, e.g., *In re Dillon*, 919 F.2d 688, 692, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990). Further, arguments of counsel cannot take the place of factually supported objective evidence. See, e.g., *In re Huang*, 100 F.3d 135, 139-40, 40 USPQ2d 1685,

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1689 (Fed. Cir. 1996); In re De Blauwe, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984). On the other hand, applicants have not shown if the dextrose monohydrate taught by Brouillard is compressible or not and merely argues that the references of record fail to teach the claimed invention. Furthermore, instant claims are not limited to CERELOSE brand of dextrose monohydrate, and applicants have not shown that the dextrose hydrate taught by Brouillard is the same as C*PHARMDEX 02011 (Glucose Monohydrate) from Cargill or LYCADEX® PF. Hence, the arguments are not persuasive and the rejection has been maintained.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -5.30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila G. Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lakshmi S Channavajjala/
Primary Examiner, Art Unit 1611
January 17, 2010